

AMENDED IN SENATE APRIL 15, 2008

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SENATE BILL

No. 1710

Introduced by Senator Oropeza
(Coauthor: Assembly Member Lieu)

February 22, 2008

An act to amend Section 2194 of, and to add Section 2610.65 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1710, as amended, Oropeza. Tax liens.

Existing law specifies that every tax on real property is a lien against the property assessed. Existing law provides that a judgment is satisfied and the lien is removed when the tax is legally paid or canceled, except by virtue of a sale of a tax certificate for that tax, as specified, or the property is sold to satisfy the tax lien.

This bill would provide that a tax is not paid or legally canceled for purposes of satisfying a judgment and removing a lien if the lien is transferred, as specified.

Existing law authorizes a person to pay the property taxes of another person pursuant to a written or oral authorization. Existing law provides that a tax lien has priority over all other liens on the property, regardless of when the other liens were created.

This bill would instead require a person, whom this bill would classify as an assessee, that seeks to authorize another person, whom this bill would classify as a payer, to pay his or her real property taxes, to file a document ~~sworn under penalty of perjury~~, *signed by the assessee as true, correct, and complete to the best of his or her knowledge*, with the tax collector containing the authorization, a statement by the assessee

acknowledging that the assessee chooses to borrow funds from the payer, as provided, a description of the property on which the payer will pay the taxes, and the payer's name, as specified. This bill would also specify that these taxes become a lien in favor of the payer against the property of the assessee upon the recordation of the tax lien transfer document, as provided, and that this lien would have the same priority as the tax lien that was transferred to the payer.

This bill would require the tax collector to issue a receipt to the payer, to authorize a transfer of the tax lien to the payer, and to certify that the payment has been made, as specified. This bill would also authorize the tax collector to charge a fee for the cost of implementing the lien transfers. This bill would authorize the holder of the lien to commence an action for foreclosure, as provided, and would authorize the assessee, who owned the property at foreclosure, to redeem the property, as provided.

~~By expanding the crime of perjury, this bill would create a state-mandated local program.~~

~~This bill would also create a state-mandated local program by requiring tax collectors to issue receipts and certifications to payers.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2194 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 2194. (a) Except as otherwise provided in this chapter, the
- 4 judgment is satisfied and the lien removed when, but not before,
- 5 either of the following occur:
- 6 (1) The tax is paid or legally canceled.
- 7 (2) The property is sold to satisfy the tax lien.
- 8 (b) For purposes of this section, the tax is not deemed paid or
- 9 legally canceled by virtue of a sale of a tax certificate for that tax
- 10 pursuant to Section 4521 or a transfer of the tax lien pursuant to
- 11 Section 2610.65.

SEC. 2. Section 2610.65 is added to the Revenue and Taxation Code, to read:

2610.65. (a) If the payer of property taxes files a sworn statement from an assessee authorizing the payer to pay the property tax of the assessee, the tax collector shall transfer the lien for property taxes, interest, and penalties to the payer upon payment by the payer of the outstanding or delinquent tax obligation, or both, as applicable. The authorization statement shall be a document, ~~sworn under penalty of perjury~~ *signed by the assessee as true, correct, and complete to the best of his or her knowledge*, that contains all of the following:

(1) A statement by the assessee acknowledging that the assessee chooses to do both of the following:

(A) Borrow funds, at an interest rate not to exceed 1.33 percent per month, from the payer necessary to pay the property taxes owed.

(B) Follow the procedures set forth in this section to facilitate that loan.

(2) A description of the real property of the assessee, the taxes upon which will be paid by the payer.

(3) The name of the payer.

(b) Notwithstanding any other provision of law, if a payer pays real property taxes, penalties, or interest of an assessee under this section, all of the following apply:

(1) (A) The taxes on the real property of the assessee that will be paid by the payer become a lien against that property in favor of the payer, upon the recordation of the tax lien transfer document by the county recorder.

(B) This lien shall have the same priority as a tax lien described in Section 2192.1 and shall secure the payment of taxes, penalties, interest, court costs, recording fees, and the reasonable and actual costs of collection incurred by the payer.

(C) The lien priority created by the recordation of the tax lien transfer document, while superior to other recorded liens, shall have the same priority of other liens relating to property taxes or special assessments authorized by law.

(2) The tax collector of the taxing jurisdiction, or his or her authorized representative, shall issue a tax lien transfer to the payer describing the payment and shall attach to that tax lien transfer document a receipt certifying, either by stamping the document

1 with the tax collector's seal of office or by signing the document
2 before a notary public, both of the following:

3 (A) That the payment so described has been made by the payer.

4 (B) That a lien exists against the real property of the assessee
5 as a result of the payment and recordation of the tax lien transfer
6 document and that the collection rights of that lien are being
7 transferred to the payer.

8 (3) The tax lien transfer document described in paragraph (2)
9 shall include all of the following information:

10 (A) A prominent heading, in no less than 12-point font, that
11 reads "Tax Lien Transfer Document."

12 (B) A disclosure that a loan has been made by the payer to the
13 assessee pursuant to this section to pay the underlying tax
14 obligation.

15 (C) A statement that the lien priority date of the document is
16 established pursuant to this section and not by the actual
17 recordation date of the tax lien transfer document.

18 (D) The name, address, and telephone number of the payer.

19 (E) The parcel number of the real property.

20 (4) The payer shall have the same obligations as a beneficiary
21 as provided in Section 2943 of the Civil Code.

22 (c) Within five working days of the payment of taxes, penalties,
23 and interest the tax collector shall provide the payer with the tax
24 lien transfer document and shall authorize the payer to record the
25 tax lien transfer document against the real property of the assessee
26 in the name of the payer in the deed records of each county in
27 which the property encumbered by the lien is located. A lien
28 authorized by this subdivision is not perfected or enforceable unless
29 it is recorded by the payer within five working days of the payer's
30 receipt of the tax lien transfer document from the tax collector.

31 (d) The tax collector may charge a reasonable fee for the cost
32 of implementing this section, not to exceed the actual cost of
33 implementing this section or two hundred fifty dollars (\$250),
34 whichever is less.

35 (e) The holder of the lien transferred pursuant to this section
36 and perfected by the recordation of the tax lien transfer document
37 shall have the same right of sale and shall be subject to the same
38 notice of intended sale requirements as described in Section 3691
39 and may, upon the passing of the interval described in subparagraph

40 (A) of paragraph (1) of subdivision (a) of Section 3691, commence

1 an action for foreclosure as described in Section 726 of the Code
2 of Civil Procedure, and shall provide notice of a sale or foreclosure
3 to all interested parties, including those described in Section 4676,
4 and to the assessee in the same manner as provided in Sections
5 3691.1 and 3691.2.

6 (f) (1) An assessee who owned property sold at a foreclosure
7 sale in accordance with subdivision (e) may redeem the property
8 by paying the purchaser the foreclosure sale price plus costs, fees,
9 and interest on the amount of the foreclosure sale price from the
10 date of the foreclosure sale to the date of redemption at a rate of
11 16 percent per annum in the year following the sale.

12 (2) If an assessee redeems sold property in accordance with
13 paragraph (1), both of the following shall apply:

14 (A) The purchaser at foreclosure, or any subsequent owner,
15 shall deliver a deed to the assessee redeeming the property.

16 (B) All liens existing on the property at the time of the
17 foreclosure sale shall remain in effect and with the same priority,
18 to the extent the liens were not paid from the foreclosure sale
19 proceeds.

20 (g) Nothing in this section shall limit the rights of any lienholder
21 to make advances for property taxes in accordance with the
22 lienholder's lien or security agreement, or to recover advances
23 made by the lienholder to pay property taxes or other sums as may
24 be undertaken in accordance with the lienholder's lien or security
25 agreement.

26 (h) Nothing in this section shall give any payer an exemption
27 from the usury, licensing, and interest rate ceiling laws of this
28 state. The maximum interest rate shall not exceed 1.33 percent per
29 month, unless it is limited further by law.

30 (i) Before accepting an application fee from the assessee, the
31 payer shall disclose in writing to the assessee both of the following:

32 (1) Each type and amount of possible charges, fees, or costs
33 that may be incurred by the assessee in connection with the loan
34 or contract under this section, and other moneys that the payer will
35 charge the assessee to pay off the loan or to redeem the property.

36 (2) The rate at which all sums specified in paragraph (1) shall
37 bear interest.

38 (j) A payer shall not accept an application to borrow funds from,
39 nor advance a property tax loan to, a property owner who qualifies
40 for property tax assistance pursuant to either Chapter 1

(commencing with Section 20501) or Chapter 2 (commencing with Section 20581) of Part 10.5 of Division 2.

(k) If the interest limitation set forth in subdivision (a) is determined not to apply to any particular lender by a state or federal court, and it is a final nonappealable judgment, any tax lien against the property by that lender shall not be transferable under this section as of the date of that judgment.

SEC. 3. The Legislature finds and declares that this act serves a compelling state interest by accelerating the collection of property tax revenues for local governments, reducing the cost of collecting those tax revenues, and by providing property owners with a lower cost option for paying delinquent property taxes to avoid the substantial penalties that attach to property tax delinquencies.

~~SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

~~SEC. 5.~~

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.